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Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Question of Western Sahara

Report of the Secretary-General

1. On 8 December 2000, the General Assembly adopted, without a vote, resolution 55/141 on the question of Western Sahara. The Secretary-General, in close cooperation with the current Chairman of the Organization of African Unity (OAU), has continued to exercise his good offices with the parties concerned. The present report, which covers the period from 31 August 2000 to 30 June 2001, is submitted in accordance with paragraph 11 of that resolution.

2. Pursuant to Security Council resolution 1309 (2000) of 25 July 2000, the Secretary-General on 25 October, submitted a report (S/2000/1029) to the Council, in which he informed the Council that, at the London meeting held on 28 June 2000, his Personal Envoy, James A. Baker III, had asked the two parties to participate in expert-level technical meetings at Geneva to address outstanding issues relating to the appeals process, prisoners of war, political detainees and the implementation of confidence-building measures for the return of Saharan refugees.

3. Those meetings had been convened on 20 and 21 July 2000 by the Special Representative of the Secretary-General, William Eagleton, and the Deputy to the Personal Envoy, John R. Bolton, with the participation of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC). The Frente Population para la liberacíon de Saguia el-Hamra y del Rio de Oro (Frente POLISARIO) had indicated that it was not in a position to discuss the release of 1,686 Moroccan prisoners of war while refugees in the Tindouf camps were still living under "unacceptable" conditions. The fate of the prisoners of war was raised by the Moroccan delegation, which also gave a general account of the status of the 207 presumed political detainees whose names had been submitted by the independent jurist to the Government of Morocco in 1998. The Moroccan delegation reported that only one among those listed was still detained in Morocco and promised to provide detailed information at a later

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stage. An annotated list providing detailed information on the status of those persons was subsequently provided by the Special Representative to the Frente POLISARIO on 9 October 2000.

4. The Secretary-General further reported that separate meetings had also been held in Geneva on the practical steps for the implementation of confidence-building measures pursuant to Security Council resolutions 1238 (1999), 1263 (1999) and 1282 (1999). Both parties had agreed in principle to allow exchanges of family visits between Laayoune and the Tindouf refugee camps under the auspices of UNHCR and the United Nations Mission for the Referendum in Western Sahara (MINURSO). However, while the Frente POLISARIO had accepted a draft paper on the exchange of family visits proposed by the United Nations, the Moroccan delegation undertook to obtain its Government's endorsement or suggested amendments. Subsequent discussions, including those held in Berlin on 28 September, had failed to produce a set of operational points acceptable to the Moroccan side. The Moroccan delegation had declined to discuss the appeals process, because it considered the problems regarding that issue as political and not technical.

5. Pursuant to Security Council resolution 1309 (2000), the parties were invited to meet in Berlin on 28 September 2000, under the auspices of the Personal Envoy of the Secretary-General. The two neigbouring countries, Algeria and Mauritania, were again invited to attend as observers. In his opening statement, the Personal Envoy emphasized that the basis for the meeting would be paragraph 1 of Security Council resolution 1309 (2000), in which the Council stated its expectation that the parties would meet in direct talks to try to resolve the multiple problems related to the implementation of the settlement plan and to try to agree upon a mutually acceptable political solution to their dispute over Western Sahara.

6. During that meeting, both parties failed to come up with specific proposals to resolve the multiple problems in the implementation of the settlement plan that both would agree to. The Frente POLISARIO was of the view that the remaining obstacles could be overcome with the cooperation of the parties and expressed its willingness to engage in a substantive discussion on the implementation of the appeals procedures immediately. Morocco, after recalling in some detail the many obstacles in the implementation of the plan, was of the view that the difficulties encountered were not of a mere technical nature but involved "errors" and "distortions" in the implementation of the plan that could not satisfy the thousands of rejected applicants. Although Morocco had sufficient reason to reject the manner in which the settlement plan was being implemented, it had not done so because it wanted to facilitate the task of the Personal Envoy. Nevertheless, Morocco was of the opinion that, despite all good will, the difficulties faced in the implementation of the plan could not be overcome.

7. The Personal Envoy regretted that the parties' positions on the outstanding issues had not changed since 1997. Neither party had come with any new position on any issue. He felt that there was no political will on either side and reiterated his view that there were many ways to achieve self-determination. It could be achieved through war or revolution; it could be achieved through elections, but this required good will; or it could be achieved through agreement, as other parties to disputes had done. He then asked the parties whether they would be willing to try the latter route without abandoning the settlement plan. The Frente POLISARIO reiterated its

commitment to the plan and its readiness to discuss the appeals process but added that it was not ready to discuss anything outside the settlement plan.

8. While also committed to the settlement plan, Morocco expressed the view that the way in which the plan was being implemented meant that two thirds of the Saharan population would be excluded from the referendum. Morocco therefore expressed the wish to explore other ways and means to settle the conflict. In response to Security Council resolution 1309 (2000), Morocco was prepared to initiate a "sincere" and "frank" dialogue with the other party to the dispute, as long as Morocco's national sovereignty and territorial integrity were respected. Morocco's position was reiterated in a letter addressed to the Secretary-General and to the President of the Security Council on 19 October 2000 (S/2000/1003).

9. Rejecting the Moroccan proposal, the Frente POLISARIO reiterated that it would cooperate and adhere to any dialogue within the framework of the settlement plan alone. The Personal Envoy indicated that while no one was abandoning the settlement plan, this was the first time that Morocco had expressed readiness to engage in a direct dialogue.

10. On 13 October 2000, the Frente POLISARIO informed the Secretary-General that it had accepted the proposals of the Personal Envoy in Berlin to facilitate the implementation of the confidence-building measures. It reaffirmed its commitment to the settlement plan and its readiness to continue the dialogue and negotiations with Morocco, under the auspices of the Personal Envoy, within the strict framework of the settlement plan, the Houston agreements and the protocols of May 1999, in order to overcome the final obstacles to the implementation of the plan.

11. On 9 October 2000, Algeria reiterated its support for the Secretary-General's efforts and those of the Personal Envoy and the Special Representative to organize a free and impartial referendum for self-determination for the people of Western Sahara (A/55/468-S/2000/975).

12. The Secretary-General recalled that when he had appointed his Personal Envoy early in 1997, he had asked him to undertake a fresh assessment of the situation the purpose of which would be threefold: to assess, in consultation with the parties, the implementability of the settlement plan in its present form; to examine whether there were any adjustments, acceptable to the parties, which would significantly improve the chances of implementing it in the near future; and, if not, to recommend other possible ways of resolving the conflict (S/1997/742, para. 23).

13. The Secretary-General shared the view of his Personal Envoy that further meetings of the parties would not succeed, and could indeed be counterproductive, unless the Government of Morocco, as administrative power of the Territory, was prepared to offer or support some devolution of authority for all inhabitants and former inhabitants of the Territory that would be genuine, substantive and in keeping with international norms. If the Government of Morocco was not prepared to offer or support some devolution of governmental authority that could be discussed at a meeting of the parties during the next extension of the mandate of MINURSO, the Mission should begin hearing the pending appeals from the identification process on an expedited basis without regard as to how long it might be expected to take to complete them. He recommended that the Security Council extend the mandate of MINURSO for a period of four months, until 28 February 2001.

14. On 30 October 2000, the Security Council adopted resolution 1324 (2000), by which it extended the mandate of MINURSO until 28 February 2001, with the expectation that the parties, under the auspices of the Personal Envoy, would continue to try to resolve the multiple problems relating to the implementation of the settlement plan and try to agree upon a mutually acceptable political solution to their dispute over Western Sahara. It also requested the Secretary-General to provide an assessment of the situation before the end of the mandate period.

15. Pursuant to the above-mentioned resolution, the Secretary-General submitted to the Council, on 20 February 2001, a report (S/2001/148) in which he informed the Security Council that his Personal Envoy had not been able to dedicate the time and effort necessary to see if the Government of Morocco, as administrative power in Western Sahara, was prepared to offer or support some devolution of authority for all inhabitants and former inhabitants of the Territory that was genuine, substantial and in keeping with international norms, as he had been required to undertake duties related to the presidential elections in the United States of America. The Personal Envoy had since been able to re-engage fully in trying to assist the parties in finding an early, durable and agreed resolution to their dispute over Western Sahara.

16. The Secretary-General informed the Council that there had been an increase in tensions due to the crossing, in early January 2001, of the Paris-Dakar rally into Western Sahara, whose organizers had only sought permission from Morocco for entering the Territory. The Frente POLISARIO had indicated that the passage of the rally through the Territory would constitute a violation of the ceasefire and that, in that event, the Frente POLISARIO would no longer consider itself bound by the ceasefire. Moroccan officials had, for their part, vowed that in such an eventuality the Kingdom would take all necessary defensive measures. However, following appeals by the presidency of OAU, friendly countries and the United Nations, the Frente POLISARIO suspended its decision to resume military activities.

17. With regard to the appeals process, the Security Council was informed that the Identification Commission had received a total of 131,038 appeals. The overwhelming majority of the appeals filed (115,645), were against exclusion from the provisional voter list, with most of them (108,708) bringing new evidence. Most of those appellants had listed one or two witnesses to support their claims, with only limited documentary evidence. Among the rest, 1,260 appellants were claiming that the Commission had failed to convoke or to identify them, 5,079 appellants had claimed force majeure, while 643 appellants, not identified, claimed to have been on the 1991 revised census list. The final category of appellants (15,393 persons) included those contesting the inclusion of other persons on the provisional voter list. Regarding potential additional appellants, the Government of Morocco estimated that those who had reached 18 years of age after 31 December 1993 would number about 30,000, while the Frente POLISARIO believed that their total number would not exceed 11,000, including 5,000 in Tindouf.

18. The Secretary-General informed the Security Council that 201 Moroccan prisoners held by the Frente POLISARIO, more than half of whom had been held for more than 20 years, had been repatriated under the auspices of ICRC. In the wake of that positive development, which had been achieved with the cooperation of Algeria and the Frente POLISARIO, the Secretary-General once again joined ICRC in calling for the early repatriation of the remaining 1,481 prisoners of war, many of whom were in poor health following their long detention.

19. With regard to military matters, there had been no progress in the implementation of the military agreements between MINURSO and the two parties, in view of the above-mentioned developments in connection with the Paris-Dakar rally. On 31 December 2000, Frente POLISARIO liaison officers had advised MINURSO that, effective 1 January, the Frente POLISARIO would impose restrictions on the freedom of movement of MINURSO air and ground reconnaissance patrols. At the same time, all Frente POLISARIO units had deployed outside of their confinement locations without prior notification to MINURSO. Such developments were in violation of the military agreements between MINURSO and the two parties and had been brought to the attention of the Frente POLISARIO, which had confirmed to MINURSO that the restrictions imposed on the military observers could not be lifted at that time.

20. Concluding his report, the Secretary-General had noted that the period since his last report had witnessed a deterioration in the relations between the two parties. Although the Frente POLISARIO had decided, at the last minute, not to act on its threat to resume hostilities, a climate of increased mistrust and bitterness had set in between the parties that was undermining the agreed ceasefire regime. Regrettably, he could report no progress towards overcoming the obstacles to the implementation of the settlement plan or towards determining whether the Government of Morocco, as administrative power in Western Sahara, was prepared to offer or support some devolution of authority for all inhabitants and former inhabitants of the Territory that was genuine, substantial and in keeping with international norms. The only positive development during that period had been the decision by the Frente POLISARIO, on 14 December 2000, to release 201 Moroccan prisoners of war on humanitarian grounds, for which he expressed his deep appreciation, in particular to the Frente POLISARIO and to ICRC, who assisted in facilitating the repatriation.

21. The Secretary-General supported the recommendation of his Personal Envoy to extend the mandate of MINURSO until 30 April 2001 in order to see whether the Government of Morocco was prepared to offer or support some devolution of governmental authority as described above. Failing such offer or support, MINURSO would be directed to begin hearing the pending appeals from the identification process on an expedited basis, without regard as to how long it might be expected to take to complete them. This would be the last request that the Personal Envoy would support for an extension of the mandate to provide time to determine if the Government of Morocco was prepared to offer or support some devolution of authority. The Secretary-General shared the views of his Personal Envoy and recommended that the Security Council extend the mandate of MINURSO for a period of two months until 30 April 2001.

22. On 27 February 2001, the Security Council adopted resolution 1342 (2001) by which it decided to extend the mandate of MINURSO until 30 April 2001, with the expectation that the parties, under the auspices of the Personal Envoy, would continue to try to resolve the multiple problems relating to the implementation of the settlement plan and try to agree upon a mutually acceptable political solution to their dispute over Western Sahara. The resolution requested the Secretary-General to provide an assessment of the situation before the end of the mandate period.

23. Pursuant to the above-mentioned resolution, the Secretary-General submitted to the Security Council, on 24 April 2001, a report (S/2001/398) in which he informed the Council that, during the reporting period, his Personal Envoy had

consulted separately with representatives of both parties, some members of the Council and representatives of MINURSO and the Secretariat in his efforts to assist the parties to find an early, durable and agreed resolution to their dispute over Western Sahara.

24. On the military side, following the Paris-Dakar rally, restrictions by the Frente POLISARIO on the movements of MINURSO military observers had remained in effect. On 15 March 2001, MINURSO was informed by the Moroccan military authorities of plans to begin construction of an asphalted road at the south-western corner of Western Sahara, across the 5-kilometre buffer strip and into Mauritania. After interventions by the Special Representative and MINURSO's military commander, work on the road was not started.

25. With regard to the Saharan refugees in the Tindouf camps, the reduction of basic assistance due to the financial constraints faced by UNHCR had had a negative impact on the beneficiaries in the camps, especially the vulnerable group of refugees. UNHCR was monitoring the overall situation and prioritizing its assistance programme to focus more on "life-sustaining" activities, especially on the vulnerable refugees.

26. The Secretary-General concluded that, although there had been no progress towards overcoming the obstacles to the implementation of the settlement plan, there had been substantial progress towards determining whether the Government of Morocco, as administrative power in Western Sahara, was prepared to offer or support some devolution of authority for the Territory. Because of that progress, the Secretary-General recommended that MINURSO's mandate be extended for two months, until 30 June 2001, so that the Personal Envoy could consult further with the parties (either separately or at a meeting of the parties, or both) concerning both a possible devolution of authority as described above and a possible solution to the problems with the implementation of the settlement plan.

27. On 27 April 2001, the Security Council adopted resolution 1349 (2001) by which it decided to extend the mandate of MINURSO until 30 June 2001, with the expectation that the parties, under the auspices of the Personal Envoy of the Secretary-General, would continue to try to resolve the multiple problems relating to the implementation of the settlement plan and to agree upon a mutually acceptable political solution to their dispute over Western Sahara. The resolution requested the Secretary-General to provide an assessment of the situation before the end of the mandate period.

28. Pursuant to the above-mentioned resolution, on 20 June 2001, the Secretary-General submitted a report (S/2001/613) to the Security Council, in which he informed the Council that, on 5 May 2001, his Personal Envoy had presented to the Algerian Government a draft "Framework agreement on the status of Western Sahara" (ibid., annex I), which he was confident that the Kingdom of Morocco would support. President Bouteflika had addressed letters to the Secretary-General and to his Personal Envoy along with a memorandum containing Algeria's views on the proposed framework agreement, which were attached to the report of the Secretary-General (ibid., annex II). The Security Council also had the opportunity to review, in the same report, an analysis of that memorandum prepared by the Secretariat (ibid., annex III).

29. The Council was further informed that, on 5 May 2001, the Personal Envoy had presented the proposed framework agreement to Secretary-General Mohamed Abdelaziz of the Frente POLISARIO, who had refused to discuss the proposed document because it did not include independence. Subsequently, the Frente POLISARIO had delivered letters to the Secretary-General and to his Personal Envoy along with official proposals aimed at overcoming the obstacles preventing the implementation of the settlement plan (ibid., annex IV). An analysis of the Frente POLISARIO proposals prepared by the Secretariat was also included in the Secretary-General's report (ibid., annex V).

30. The Secretary-General provided an assessment of the problems in the implementation of the settlement plan since its adoption in 1991 in paragraphs 20 to 42 of his report. While he pointed out that he had previously provided such a detailed account in his report of 17 February 2000 (S/2000/131), he reiterated that, with the exception of the ceasefire, none of the plan's main provisions had been fully implemented because of fundamental differences between the parties over its interpretation, and, in particular, because the cooperation of both parties with the United Nations was required for the plan's implementation (S/22464, para. 55). The establishment of the electorate body for the referendum had been and remained the most contentious issue and one of the main reasons for the successive deadlocks in MINURSO's work because of the difficulties in determining who, among the Saharans, were eligible to take part in the referendum. Throughout the 10 years since the United Nations had undertaken the implementation of the plan, it had tried several times to organize direct talks between the parties as it was understood that such talks were essential to the achievement of the compromises and understandings necessary for the smooth implementation of the plan. The only time that such direct talks had resulted in substantive discussions between the parties had been in 1997 when, under the auspices of the Personal Envoy of the Secretary-General, they had concluded the Houston agreements (S/1997/742).

31. The Secretary-General also recalled that after the three rounds of talks in 2000, when the parties had met again under the auspices of the Personal Envoy to come up with solutions to the problems of the plan and to try to agree upon a mutually acceptable political solution to their dispute over Western Sahara, Morocco, for the first time, had expressed the wish to engage in a direct dialogue with the Frente POLISARIO, under the auspices of the United Nations, to try to resolve the dispute.

32. Concluding his report, the Secretary-General recalled the three questions that he had asked his Personal Envoy when he had appointed him in 1997 regarding the resolution of the conflict over Western Sahara. Given the history of the United Nations involvement over the past 10 years in the search for an acceptable way to implement the settlement plan, the Personal Envoy had concluded that there were serious doubts as to whether the settlement plan could be implemented in its current form. It was equally doubtful whether adjustments to the plan would resolve the problems, since the endgame would still produce one winner and one loser. Furthermore, any substantial adjustments would require the mutual agreement of the parties and an enforcement mechanism approved by the Security Council.

33. The Secretary-General expressed the hope, shared by his Personal Envoy, that Morocco, the Frente POLISARIO, Algeria and Mauritania would agree to meet over the next five months as parties, either directly or through proximity talks, under the auspices of the Personal Envoy, to discuss with specificity the elements of the

proposed framework agreement that was aimed at reaching an early, durable and agreed resolution of the conflict over Western Sahara in a way that did not foreclose self-determination, but indeed provided for it. He stressed that the proposed framework agreement was not unlike agreements used to address similar situations elsewhere where devolution of authority to the inhabitants of a non-self-governing territory was granted with the final status to be determined by a referendum. Should the parties agree to discuss a political solution, this would not prejudice their final positions since nothing would be agreed until everything had been agreed. While the discussions on the proposed framework agreement would go on, the settlement plan would not be abandoned, but would be put on hold. Should the Personal Envoy decide to continue with the discussions about the proposed framework agreement after the five-month period in order to negotiate such changes as would make it acceptable to Morocco, the Frente POLISARIO, Algeria and Mauritania, it would be the Secretary-General's intention to recommend to the Security Council that MINURSO's mandate be extended to permit time for such negotiations. If, on the other hand, by the end of that period, the Personal Envoy should conclude that it would not be worthwhile to continue with the consultations, the Security Council could decide to review the mandate of MINURSO and consider what further role the Mission could play. For the reasons outlined in the report, the Secretary-General recommended that the mandate of MINURSO be extended for five months until 30 November 2001.

34. On 29 June 2001, the Security Council adopted resolution 1359 (2001), by which it decided to extend the mandate of MINURSO until 30 November 2001. The Council fully supported the efforts of the Secretary-General to invite all parties to meet directly or through proximity talks, under the auspices of his Personal Envoy, and encouraged them to discuss the draft framework agreement and to negotiate any specific changes they would like to see in that proposal, as well as to discuss any other proposal for a political solution that may be put forward by the parties in order to arrive at a mutually acceptable solution. The Council also affirmed that, while the discussions referred to above continued, the official proposals submitted by the Frente POLISARIO to overcome the obstacles preventing implementation of the settlement plan would be considered.